

Milpitas Ethics Evaluation Panel
Protocols
(Adopted by the Panel, 12/09/04)

These protocols implement and are consistent with Chapter I-40 of the Milpitas Municipal Code (adopted by Ord. No. 265) (“the Ethics Evaluation Panel Ordinance”) and are adopted pursuant to Municipal Code section I-40-7. They are intended to make the processes by which the Panel operates clear, and to dispatch routine matters to allow the Panel to devote its time and attention to their primary task, making decisions about complaints.

The protocols are divided into 4 parts:

- **Stage 1: Processing Complaints**
- **Stage 2: Hearing Meeting**
- **Stage 3: Communications**
- **Administrative Details**

Stage 1: Processing Complaints

(Ordinance, 14-16; Complainant, City Clerk, Lead Ethics Evaluator)

- City Clerk notifies Lead Ethics Evaluator or designated Alternate upon receipt of a complaint to make arrangements to transmit the complaint and supporting documentation in accordance with the Ordinance (In the case of a sealed envelope marked confidential, the City Clerk and Lead Ethics Evaluator or designated Alternate will determine whether fax, delivery or pick up is more appropriate).
 - The City Clerk has the discretion to contact other panelists to process a complaint if she is unable to reach the Lead Ethics Evaluator or designated Alternate within 24 hours.
- Before close of the next business day Lead Ethics Evaluator or designated Alternate decides whether the complaint meets the four criteria for acceptance for a hearing specified in Ordinance, I-40-16 (See also #10 of “Twenty Questions.”). The Lead Ethics Evaluator or designated Alternate then takes one of four actions:
 1. Rejection: Lead Ethics Evaluator sends a Panel Complaint Rejection Letter by e-mail or fax notifying complainant, and by cc: notifies the City Clerk, and indicates which of the criteria triggered the rejection.
 - The Lead Ethics Evaluator may reject a complaint if it is determined that the Panel has already heard and acted on the allegation at a prior hearing meeting.
 2. Acceptance: Lead Ethics Evaluator schedules a meeting of Panel—by ordinance, the meeting should be within 3 business days of the City Clerk’s receipt of the complaint. The date and time set for the hearing does not require prior approval of the respondent. The Lead Ethics Evaluator notifies via e-mail or fax the parties using the appropriate Panel letter: a) the *complainant* is notified of the acceptance and informed of the hearing date/time/place; b) the *respondent* is notified that a complaint has been filed, provided a summary of the complaint, and informed of the hearing date/time/place; and c) the *City Clerk*, who upon receiving a copy of these letters, prepares and distributes a public notice of the meeting and contacts the respondent and the Panel regarding the most expedient means to transmit the agenda packet for the meeting, which shall include the full complaint and attachments.
 3. Postpone Hearing: To postpone a hearing beyond the 3 business day period the Lead Ethics Evaluator or designated Alternate must obtain consent of the respondent in writing (E-mail is an acceptable substitute.).
 4. Forward to City Manager: Lead Ethics Evaluator will forward complaints regarding City employees to the City Manager’s Office.
- Contact with Complainant. The Lead Ethics Evaluator may consult with the complainant to clarify items on the complaint form or submitted as documentation.
- Re-filed complaints: The Lead Ethics Evaluator and City Clerk should make it as easy as possible for complainants to re-file rejected complaints—by, for example, not requiring him/her to re-submit the entire form and supporting materials if only 1 or 2 pages are changed.

Stage 2: Hearing Meeting

Preliminaries

1. These protocols implement and are consistent with Chapter I-40 of the Milpitas Municipal Code (adopted by Ord. No. 265) (“the Ethics Evaluation Panel Ordinance”) and are adopted pursuant to Municipal Code section I-40-7.
2. Lead Ethics Evaluator or designated alternate serves as chief hearing officer, who presides over all facets of the hearing meeting. The chief hearing officer is responsible for keeping the hearing and deliberations focused on the complaint before the board and for conducting the meeting in an orderly and timely fashion. The chief hearing officer has the authority to make determinations whether testimony or evidence is relevant, duplicative, necessary, etc. and at any stage of the proceedings may impose restrictions on speakers before the panel.
3. The Ethics Evaluation Panel consists of three of the Ethics Evaluators approved by the City Council.
4. The Hearing phase is restricted to consideration of the allegations specified on the Complaint Form accepted by the Lead Ethics Evaluator.
5. Complainants are expected to present evidence at the hearing to support their complaint to the Ethics Evaluation Panel. Therefore, the Ethics Evaluation Panel reserves the right to dismiss a complaint with prejudice if the complainant does not appear at the scheduled hearing meeting.
6. Respondents unable to appear at the scheduled hearing meeting may submit a written response and documentation to the Lead Ethics Evaluator or designated alternate any time prior to the conclusion of the hearing phase meeting.
7. Ordinarily hearing a complaint will take approximately one hour. If circumstances warrant, the chief hearing officer may extend the duration of the hearing at his or her discretion. All parties involved in the complaint are expected to remain at the meeting to the end.
8. The meeting proceeds according to the following outline, guided by the estimated time allotments and restrictions set for each section

Hearing Phase of the Meeting (50 minutes)

There are four parts to this phase of the meeting.

- **Introduction** (5 minutes):
 1. The hearing officer opens the hearing by reading from the Complaint Form: the allegation, the date of the alleged incident, and the Core Value and Role-Model Behaviors specified in the complaint.
 2. The hearing officer will ask the complainant(s) and respondent(s) to identify themselves.
 3. The hearing officer and panel will open the hearing phase of the meeting by outlining the process below, explaining the purpose of the panel, and reminding all present that its purpose is for the panel to hear evidence from both parties related to the complaint so that the Panel reach the findings of fact necessary to make a decision. The hearing officer will remind the participants that the process specified in the Ethics Evaluation Panel Ordinance is designed to be an informal opportunity for both sides to present their side of the story but that some rules are necessary to ensure fairness to all parties.
- **Presentation of Evidence** (30 minutes):

The chief hearing officer will direct the parties to proceed as follows:

1. The (principal) complainant will be given a maximum of 15 minutes in which to present the allegation, introduce documentary evidence, and present testimony from witnesses.
2. The respondent(s) named in the complaint will be given a maximum of 15 minutes in which to respond to the allegation, introduce documentary evidence, and present testimony from witnesses. If a respondent is unable to appear and submits a written response, the chief hearing officer shall either read or summarize the response.
3. Members of the Ethics Evaluation Panel can ask questions at any time during this stage of the hearing. Complainants and respondents (the parties) shall not interrupt the other side during presentations. The parties may reserve time from their presentation to extend the length of their closing statement.

Additional time can be granted to both sides by the chief hearing officer as circumstances warrant.

- **Public Comment** (approximately 9 minutes)

The chief hearing officer will invite other individuals in attendance to offer relevant and non-repetitive comment on the allegations outlined in the complaint form. Although individual comments ordinarily are limited to two minutes, the panel has the authority to restrict or expand time limits at the hearing.

- **Closing Statements** (6 minutes):

The chief hearing officer will direct the parties to proceed as follows:

1. Complainant will be given a maximum of three minutes to offer closing comments.
2. Respondent will be given a maximum of three minutes to offer closing comments.

At the conclusion to public comment, the chief hearing officer determines if the panel is ready to begin deliberations, and then announces the hearing and public comment phases of the meeting are concluded.

Deliberation Phase of the Meeting (10 minutes).

Panelists make their best judgment on the evidence presented from the perspective of a reasonable person's understanding of how the Code of Ethics and the behavioral standards apply to the situation described in the complaint. The Panel is also guided by the "Making Ethical Decisions" outlined in the *City's Pocket Guide to Ethical Decision-Making*.

The chief hearing officer will open the deliberation phase by inviting panelists to discuss the original allegation and the presentations by the complainant, respondent, and public during the hearing phase. If necessary, the chief hearing officer may reopen the hearing phase for the purposes of asking questions of the parties. Ordinarily the panel will work toward consensus; but the chair shall make a formal call to vote as appropriate and record the results, which will be included in the Panel's decision. (There are no provisions for abstaining.) The deliberations of the Panel should focus on the following decisions.

1. A decision whether the Ethics Code was violated as alleged in the Complaint Form;
2. A decision regarding any requirements or action the panel wishes to pursue in addition to the decision;
3. A decision as to the severity of the violation and the level of public criticism the panel wishes to impose.

The chief hearing officer will conclude the deliberations by ensuring him/herself that he/she has captured the Panel direction regarding final decisions, intent, and key language to be used in drafting the Panel's written decision.

In addition to considering the original allegation, the Panel has the authority to determine if a complaint was spurious and therefore in violation of the Ethics Code. In such circumstances, the Panel can impose sanctions and public criticism upon the complainant as it deems appropriate.

The Panel has the authority to request additional information, or to carry deliberations beyond this meeting. Should the panel decide to continue the matter, a date (ordinarily within 3 business days) and time should be set at that meeting.

The Panel may at this point in its deliberations take up items warranting further discussion that may have arisen during the complaint process and hearing but have no bearing on the decision.

Closing

In cases where a decision is reached, the chief hearing officer will explain that he/she will prepare a written statement of the Panel's decision within 24 hours which will be made public by the end of the second business day following the meeting, thank all participants, and declare the meeting concluded.

Stage 3: Communications

(Ordinance, Sect 17; Lead Ethics Evaluator, City Clerk)

- Within one business day after a hearing meeting, the Lead Ethics Evaluator or designated Alternate will complete a written decision as specified in Ordinance, Section 17, A. A “Check Sheet for Written Decision Outlining Panel’s Decision” (See below.) has been developed to guide this process.
 - Revision of Written Decision. Ordinarily, written decisions will not be revised. However, in the event that anyone brings to the attention of the Lead Ethics evaluator ways in which the decision omits or misses relevant facts from the hearing meeting, the Lead Ethics Evaluator may issue a revised written decision within two weeks of the hearing.
- Within two business days after the meeting, the City Clerk will arrange for the posting of the written decision on the designated area of the City Web site; for the distribution of the decision to the complainant and respondent (and to the Mayor, if Panel recommends City Council action); and for placing it as an information item on the agenda of the next City Council meeting.
- Consultation. In accordance with the Brown Act, there is no provision for drafts shared with the Panel; the Lead Ethics Evaluator or Designated alternate alone is responsible for preparation of the decision. The Lead Ethics Evaluator or Designated alternate may consult with City Attorney regarding procedural questions.
- Document Retention. The City Clerk’s Office will retain files on the Ethics Evaluation Panel activity for two years, in accord with City policy. After that, the Panel requests that files be maintained electronically for another ten years. The Lead Ethics Evaluator may maintain separate files on complaints for one year for the purposes of completing the annual report.
- Web Posting. Once a complaint is accepted by the Lead Ethics Evaluator, it becomes public. The Panel’s written decision and the original complaint form and documentation for each case will be posted on the City’s web page for 90 day from the date the complaint was accepted, and thereafter be maintained in an annual archive. With the exception of personal addresses, all information on the complaint forms will be included in the web posting
- Media: In the interests of maintaining judicial integrity and impartiality, panelists are asked to respond to press inquiries with “No Comment,” allowing the Panel’s written decision to speak for itself.

**Check Sheet for Written Decision Outlining Panel's Decision
(See Ethics Panel Protocols, Stage 3, Communications)**

Section 1-40-17 of Ordinance 265 outlines the manner in which the decisions of the Ethics Panel are to be communicated and made public. This check sheet is designed to assist the Lead Ethics Evaluator or his designated Alternate in preparing that communication.

____ *Summary of the Alleged Violation.* Ordinarily this will consist of a brief summary of the relevant elements of the complaint form.

____ *Findings of Fact Supporting the Decision.* This will consist of a brief account of the salient evidence and considerations from the hearing that formed the basis for the Panel's decision.

____ *Conclusion regarding whether or not a Violation Occurred.* This will consist of a brief sentence conveying the Panel's decision on the complaint, including the vote by which it was reached.

____ *Public Criticism Sanction in the Case of Violations.* This will consist of a brief sentence specifying the level of sanction (based on the severity of the violation) of the Panel imposed when an individual is found to be in violation of the Code, including the vote by which the level was selected.

____ *Requirements Imposed in cases judged to be a violation, if applicable.* The panel may elect to impose requirements on a respondent found in violation of the Code (e.g. formal apology, cease and desist, etc.). This section would specify the requirement(s) if any imposed by the Panel.

____ *Recommendation to City Hall for further action, if applicable.* The panel may elect to recommend further action to the City Council (e.g. legal action, censure, suspension or removal from office). This section will make that recommendation, and include the vote by which the panel made that decision. *

** NB if Panel recommends City Council Action, Chief Hearing Officer will also send a copy of the written decision to the Mayor, calling his attention to this portion of the decision.*

Administrative Details

- Panelists' Monthly Schedules
 - On the last day of each month, Lead Ethics Evaluator requests a schedule for that month from each panelist that identifies dates and times they would not be available for a meeting. On the 1st day of each month, the Lead Ethics Evaluator will circulate the completed schedule indicating unavailability of panelists to Panel and to City Clerk.
 - In the event 2 (or more) panelists are not available on the same day, lead Evaluator will put the Ethics Panel alternate on notice.
- Panelists and Scheduling Hearing Meetings.
 - The Lead Ethics Evaluator or Designated Alternate will ordinarily convene 2 other members of the panel for a hearing meeting no later than 3 business days after receipt of complaint in the City Clerk's Office. Panelists selected for the hearing will be notified by phone and e-mail of the date and time, and are asked to confirm attendance ASAP.
 - There are no provisions for Panelists to recuse themselves from a particular case.
 - If panelists do not respond within 12 hours or cannot attend, the Lead Ethics Evaluator or designated Alternate will contact another panelist.
 - Meetings will ordinarily be scheduled on evenings of week days; but if circumstances warrant it, they can be scheduled on Saturdays.
 - Meetings require public notice prepared by City Clerk 24 hours in advance.
- Panelists Rotation. 3 of the 4 members of the Panel are required for a hearing. The Lead Ethics Evaluator will rotate participation in hearings evenly among members.
- Designated Alternate: Alternates for the Lead Ethics Evaluator will be appointed:
 - By the Lead Evaluator on or near the 1st day of the month when he anticipates unavailability for specific dates within that month.
 - By the Lead Evaluator when an emergency, illness, etc. makes him unable to attend a panel.
 - By the Panel with the assistance of the City Clerk should the Lead Ethics Evaluator be unable to make the arrangements himself.
- Panel Interaction with City Staff : Autonomy and independence—in fact and by perception—are essential to Panel's credibility. It is therefore recommended that (with the exception of invoices), the Panel restrict interactions regarding Panel business with City to the City Clerk and City Attorney.
- Annual June Meetings to discuss, revise and approve the annual Report drafted by Lead Ethics Evaluator will be on the first Thursday in June at a time set by the Lead Ethics Evaluator.
- Compensation: Details are specified in panelists' contracts; panelists submit invoice monthly or as desired.
- Media, Recording, etc. Although individuals from the public may record them, these meetings will not be recorded or broadcast. In the interests of maintaining judicial integrity and impartiality, panelists are asked to respond to press inquiries with "No Comment," allowing the Panel's written decision to speak for itself.
- Documents: The City Clerk maintains the official files for the Panel.

Panel Letters

Three Panel letters—*complaint rejection, complain acceptance, and respondent notification*--have been drafted and should be used as templates by the Lead Ethics Evaluator or Designated Alternate for communicating with complainants and respondents.

Complaint Rejection Letter

Ethics Evaluation Panel
c/o City Clerk
City of Milpitas
455 E. Calaveras Blvd
Milpitas CA 95035-3160
DATE

Name
Address

Dear Mr./Ms. _____

The complaint filed (*Day and date, 200__*) with the City Clerk's Office alleging a violation of the City of Milpitas Ethics Code has been rejected.

The complaint was rejected because it did not conform to one or more of the criteria specified in Milpitas City Ordinance 265, Section I-40-16 as captured in "Twenty Questions," #10: (*The Lead Ethics Evaluator may elect to add brief specifications to clarify the decision.*)

- _____ the respondent is one of the person over whom the EEP has jurisdiction: City Council members, commissioners, and candidates for City Council
- _____ Complaints are based on behavior or actions that took place on or after September 21, the day the EEP ordinance took effect.
- _____ Complaints state the specific code or Behavioral Standard alleged to have been violated.
- _____ The Citizen Complaint Form has been filled out completely, signed by the complainant, and dated.
- _____ Sufficient facts, evidence, documentation and witnesses, if any, are detailed in the form, prior to the hearing, to warrant a hearing.

This decision relates only to the acceptability of the complaint to advance to a hearing; it has no bearing on the merits of the complaint itself.

I refer you to the "Holding Others Accountable" section of the Milpitas *Ethics First!* web site (http://www.ci.milpitas.ca.gov/ethics_1st/next.htm) for copies (in PDF format) of Ordinance 265 and the "Twenty Questions" document cited above.

You have the right to re-file your complaint at any time.

Sincerely,

Philip Riley
Lead Ethics Evaluator

Complaint Acceptance Letter

Ethics Evaluation Panel
c/o City Clerk
City of Milpitas
455 E. Calaveras Blvd
Milpitas CA 95035-3160
DATE

Name
Address

Dear Mr./Ms. _____

The complaint filed (*Day and date, 200__*) with the City Clerk's Office alleging a violation of the City of Milpitas Ethics Code has been accepted.

The City of Milpitas Ordinance establishing the Ethics Evaluation Panel (265) intends that complaints be handled as expediently as possible, stating that a hearing meeting "...shall be set on a date as soon as possible but in no event more than 3 business days following the City Clerk's receipt of the complaint..." (I-40-16). I have therefore scheduled the meeting to hear this complaint on _____. The City Clerk will distribute a public notice of this meeting with a copy of the complaint and accompanying documentation as well as details about the meeting time and location later today. If it is impossible for you to make this scheduled meeting, please contact me as soon as possible to discuss the matter (priley@scu.edu; 408-554-2199)

At the hearing meeting you are invited to come before the panel to present your complaint, including witnesses, testimony and additional documentary evidence relevant to the complaint you wish to present. In preparing your presentation, please bear in mind that the Panel will ordinarily limit its inquiry to the allegations you specified on the complaint form and make its decision regarding the case at this meeting. The Ethics Panel reserves the right not to hear a complaint if the complainant does not appear in person at the scheduled hearing meeting.

In preparing for the scheduled meeting you may want to review materials posted on the Milpitas *Ethics First!* web site (http://www.ci.milpitas.ca.gov/ethics_1st/next.htm).

Sincerely,

Philip Riley
Lead Ethics Evaluator

Cc: Gail Blalock, City Clerk

Respondent Notification Letter

Ethics Evaluation Panel
c/o City Clerk
City of Milpitas
455 E. Calaveras Blvd
Milpitas CA 95035-3160
DATE

Name
Address

Dear Mr./Ms. _____

This letter is to notify you that an allegation you have violated (a) provision(s) in the City of Milpitas Ethics Code was filed with the City Clerk's Office on (date received by City Clerk). As the Lead Ethics Evaluator, I have determined the complaint complies with the criteria for convening the Ethics Evaluation Panel to hear the complaint.

(Note, this paragraph can also be used in the written decision of the panel.) The complaint was filed by (Name of Complainant). The complaint alleges that the (name specific value[s]) value(s) of the Milpitas Ethics Code were violated when you (Base this summary on Item 4, Description of Facts, from the Complaint Form) on (date specified in complaint)

The City of Milpitas Ordinance establishing the Ethics Evaluation Panel (265) intends that complaints be handled as expediently as possible, stating that a hearing meeting "...shall be set on a date as soon as possible but in no event more than 3 business days following the City Clerk's receipt of the complaint..." (I-40-16). I have therefore scheduled the meeting to hear this complaint on _____. The City Clerk will contact you regarding the most expedient means to provide you with a full copy of the complaint and accompanying materials. In addition, the City Clerk will distribute a public notice of this meeting with a copy of the complaint and accompanying documentation and details about the meeting time and location.

At the hearing meeting you are invited to come before the panel to present your response to the complaint, including witnesses, testimony and documentary evidence relevant to the complaint you wish to present. In preparing your presentation, please bear in mind that the Panel will ordinarily limit its inquiry to the allegations outlined on the complaint form and make its decision regarding the case at this meeting. Documentation should therefore be as brief as possible. Should you elect to introduce documents, please bring 5 copies of with you for distribution at the meeting.

I refer you to the "Holding Others Accountable" section of the Milpitas *Ethics First!* web site (http://www.ci.milpitas.ca.gov/ethics_1st/next.htm) for copies (in PDF format) of the Milpitas Ethics Complaint form, the full text of Ordinance 265, and a FAQ document on the complaint process.

Sincerely,

Philip Riley
Lead Ethics Evaluator

Cc: Gail Blalock, City Clerk